

House File 2686 - Reprinted

HOUSE FILE _____
BY COMMITTEE ON WAYS AND
MEANS

(SUCCESSOR TO HF 2610)
(SUCCESSOR TO HSB 717)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to unauthorized aliens and determination and
2 identity protection and the employer=employee relationship by
3 preventing identity theft in the procurement of employment and
4 providing for the employment classification of individuals,
5 establishing a living wage study, and providing penalties and
6 an appropriation.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
8 HF 2686
9 ak/jg/25

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1 1 DIVISION I
1 2 IDENTITY THEFT == FALSIFYING DOCUMENTS
1 3 Section 1. NEW SECTION. 715A.8A IDENTITY THEFT ==
1 4 FALSIFYING DOCUMENTS.
1 5 It is an aggravated misdemeanor for a person to do any of
1 6 the following:
1 7 1. Make a driver's license, a nonoperator's identification
1 8 card, a blank driver's license form, or any other form or
1 9 document used to establish a person's identity if the person
1 10 has no authority or right to make the license, card, or form
1 11 in order to assist an unauthorized alien to obtain employment.
1 12 2. Obtain, possess, or have in the person's control or on
1 13 the person's premises, driver's license or nonoperator's
1 14 identification card forms, or any other forms or documents
1 15 used to establish a person's identity in order to assist an
1 16 unauthorized alien to obtain employment.
1 17 3. Obtain, possess, or have in the person's control or on
1 18 the person's premises, a driver's license or a nonoperator's
1 19 identification card, or blank driver's license or
1 20 nonoperator's identification card form, or any other form or
1 21 document which could be used to establish a person's identity,
1 22 which has been made by a person having no authority or right
1 23 to make the license, card, or form in order to assist an
1 24 unauthorized alien to obtain employment.
1 25 4. Use a false or fictitious name in any application for a
1 26 driver's license or nonoperator's identification card or to
1 27 knowingly make a false statement or knowingly conceal a
1 28 material fact or otherwise commit fraud on an application in
1 29 order to assist an unauthorized alien to obtain employment.
1 30 DIVISION II
1 31 IDENTITY THEFT
1 32 ARTICLE IX
1 33 IDENTITY THEFT DIVISION
1 34 Sec. 2. NEW SECTION. 10A.901 DEFINITIONS.
1 35 As used in this article:
2 1 1. "Administrator" means the person coordinating the
2 2 administration of the division.
2 3 2. "Division" means the investigations division of the
2 4 department of inspections and appeals.
2 5 Sec. 3. NEW SECTION. 10A.902 IDENTITY THEFT PREVENTION
2 6 == EMPLOYERS.
2 7 1. a. An employer, as defined in section 91A.2, or the
2 8 employer's designee shall certify under oath or affirmation by
2 9 signing the form described in subsection 2, under penalty of
2 10 perjury under subsection 3, that the employer or the
2 11 employer's designee has examined, within ten business days of
2 12 hiring a new employee, as defined in section 91A.2, to work in

2 13 this state, the driver's license or nonoperator's
2 14 identification card issued by the state of Iowa, Minnesota,
2 15 South Dakota, Nebraska, Missouri, Illinois, or Wisconsin of
2 16 the new employee for facial validity in order to verify the
2 17 new employee's identity.
2 18 b. The employer or the employer's designee shall make a
2 19 photocopy of the new employee's driver's license or
2 20 nonoperator's identification card. The employer or employer's
2 21 designee shall retain the photocopy of the new employee's
2 22 driver's license or nonoperator's identification card and the
2 23 certified form for the period of the employee's employment and
2 24 for one year after the termination of the employee's
2 25 employment.

2 26 c. (1) An employer may delegate the examination,
2 27 certification, and recordkeeping to a designee, but shall be
2 28 obligated to review and shall remain responsible for the
2 29 designee's actions in paragraphs "a" and "b" relating to
2 30 examination, certification, recordkeeping, and hiring.

2 31 (2) Failure to fulfill the requirements pursuant to
2 32 paragraphs "a" and "b" shall subject an employer or an
2 33 employer's designee to a civil penalty not to exceed one
2 34 thousand two hundred fifty dollars for a first violation as
2 35 determined by the administrator. An employer or employer's
3 1 designee who commits a second violation within six years of
3 2 the first violation shall be subject to a civil penalty not to
3 3 exceed one thousand eight hundred seventy-five dollars as
3 4 determined by the administrator. An employer or employer's
3 5 designee who commits a third or subsequent violation within
3 6 six years of the first violation shall be subject to a civil
3 7 penalty not to exceed three thousand one hundred twenty-five
3 8 dollars as determined by the administrator.

3 9 (3) If the administrator determines an employer's designee
3 10 is responsible for a violation of paragraph "a" or "b" and
3 11 assigns a civil penalty to the designee, the administrator may
3 12 assign a second civil penalty up to the same amount to the
3 13 employer in accordance with the employer's responsibility
3 14 under subparagraph (1).

3 15 2. The division shall prescribe and provide a form that
3 16 the employer or employer's designee shall sign for each new
3 17 employee. The form shall include a statement that the
3 18 employer or the employer's designee has personally certified
3 19 under oath or affirmation that the employer or the employer's
3 20 designee has examined the new employee's driver's license or
3 21 nonoperator's identification card and determined that the
3 22 license or card was facially valid to the best of the
3 23 employer's or employer's designee's knowledge, information,
3 24 and belief, under penalty of perjury under subsection 3. The
3 25 form shall include a place for the signee to identify whether
3 26 the signee is the employer or the employer's designee. For
3 27 informational purposes for the employer or the employer's
3 28 designee, the form shall include color examples of the back
3 29 and front of driver's licenses and nonoperator's
3 30 identification cards issued by the states of Iowa, Minnesota,
3 31 South Dakota, Nebraska, Missouri, Illinois, and Wisconsin.

3 32 3. a. A person who certifies under oath or affirmation a
3 33 false statement under subsection 1 commits a class "D" felony.

3 34 b. A person who procures or offers any inducement to
3 35 another to certify under oath or affirmation the requirements
4 1 of subsection 1 with the intent that the other will conceal
4 2 material facts commits a class "D" felony.

4 3 4. This section shall not infringe upon the authority of
4 4 the civil rights commission pursuant to chapter 216.

4 5 Sec. 4. NEW SECTION. 10A.903 ENFORCEMENT.

4 6 1. The administrator shall adopt rules pursuant to and
4 7 consistent with chapter 17A regarding investigations to
4 8 determine whether violations of this article or any rule
4 9 adopted pursuant to this article have occurred.

4 10 2. The administrator and inspectors of the division shall
4 11 have jurisdiction for investigation and enforcement in cases
4 12 where employers may be in violation of the requirements of
4 13 this article or rules adopted pursuant to this article.

4 14 3. If, upon investigation, the administrator or the
4 15 administrator's authorized representative believes that an
4 16 employer or an employer's designee has violated this article,
4 17 the administrator shall with reasonable promptness issue a
4 18 citation and civil penalty.

4 19 4. Each citation shall be in writing and shall describe
4 20 with particularity the nature of the violation, including a
4 21 reference to the provision of the statute alleged to have been
4 22 violated.

4 23 5. If a citation is issued, the administrator shall,

4 24 within seven days, notify the employer or employer's designee
4 25 by service in the same manner as an original notice or by
4 26 certified mail of the civil penalty, if any, proposed to be
4 27 assessed.

4 28 6. A determination by the administrator as to whether a
4 29 violation of this article or rules adopted pursuant to this
4 30 article has occurred shall be considered final agency action.

4 31 7. Judicial review of any final agency action of the
4 32 administrator taken pursuant to this article may be sought in
4 33 accordance with the terms of chapter 17A. If a petition for
4 34 judicial review is not filed within thirty days after service
4 35 of the determination of the administrator, the administrator's
5 1 determination shall be conclusive in connection with any
5 2 petition for enforcement which is filed by the administrator
5 3 after the expiration of the thirty-day period. In such case,
5 4 the clerk of court, unless otherwise ordered by the court,
5 5 shall forthwith enter a decree enforcing the order and shall
5 6 transmit a copy of the decree to the administrator and the
5 7 employer or employer's designee named in the petition.

5 8 Sec. 5. NEW SECTION. 10A.904 INTERAGENCY COOPERATION.

5 9 1. All state agencies shall cooperate under this article
5 10 by sharing information concerning employee identity
5 11 verification by employers or employers' designees pursuant to
5 12 this article.

5 13 2. Upon determining that an employer or an employer's
5 14 designee violated section 10A.902, the administrator shall
5 15 notify the appropriate state agencies, each of which shall
5 16 investigate the compliance with other applicable law by the
5 17 employer or employer's designee.

5 18 3. a. Upon determining that an employee is using false
5 19 identity information, all state agencies shall investigate
5 20 whether the employee has violated any laws.

5 21 b. The following state agencies shall take the following
5 22 action:

5 23 (1) The secretary of state's office shall remove the
5 24 employee's false identity information from the voter
5 25 registration list, as applicable, pursuant to voter
5 26 qualification requirements in section 48A.5.

5 27 (2) The department of transportation shall remove the
5 28 employee's false identity information from the agency's
5 29 driver's license records, as applicable.

5 30 (3) The department of human services shall investigate the
5 31 employee's possible use of the false identity information to
5 32 gain access to federal and state resources.

5 33 4. Cooperation under this article shall be considered a
5 34 duty of office for the heads of the state agencies or their
5 35 designees. Failure to so cooperate constitutes a violation of
6 1 section 721.2, subsection 6.

6 2 Sec. 6. NEW SECTION. 10A.905 REPORTING REQUIREMENT.

6 3 The administrator shall submit an annual report about the
6 4 administration of this article to the general assembly by
6 5 January 15. The first annual report shall be due January 15,
6 6 2010.

6 7 Sec. 7. Section 321.177, Code 2007, is amended by adding
6 8 the following new subsection:

6 9 NEW SUBSECTION. 10. To any person who is an unauthorized
6 10 alien. For the purpose of this section, an "unauthorized
6 11 alien" means a person who is not a citizen or legal resident
6 12 and who has not been lawfully admitted to the United States
6 13 pursuant to federal law.

6 14 Sec. 8. Section 321.190, subsection 1, paragraph b, Code
6 15 2007, is amended to read as follows:

6 16 b. The department shall not issue a card to a person
6 17 holding ~~a~~ an Iowa driver's license. However, a card may be
6 18 issued to a person holding a temporary permit under section
6 19 321.181. A card may be issued to a nonresident as otherwise
6 20 prescribed in this section for the purpose of identity

6 21 verification for employment, pursuant to section 10A.902. The
6 22 card shall be identical in form to a driver's license issued
6 23 under section 321.189 except the word "nonoperator" shall
6 24 appear prominently on the face of the card. A nonoperator's
6 25 identification card issued to a person under eighteen years of
6 26 age shall contain the same information as any other
6 27 nonoperator's identification card except that the words "under
6 28 eighteen" shall appear prominently on the face of the card. A
6 29 nonoperator's identification card issued to a person eighteen
6 30 years of age or older but under twenty-one years of age shall
6 31 contain the same information as any other nonoperator's
6 32 identification card except that the words "under twenty-one"
6 33 shall appear prominently on the face of the card.

6 34 Sec. 9. Section 321.190, subsection 1, Code 2007, is

6 35 amended by adding the following new paragraph:
7 1 NEW PARAGRAPH. e. The department shall not issue a card
7 2 to a person who is an unauthorized alien as defined in section
7 3 321.177.

7 4 Sec. 10. Section 715A.8, subsections 2 and 3, Code 2007,
7 5 are amended to read as follows:

7 6 2. A person commits the offense of identity theft if the
7 7 person fraudulently uses or attempts to fraudulently use
7 8 identification information of another person or fictitious
7 9 person, with the intent to contract for or to obtain credit,
7 10 property, services, employment, or other benefit.

7 11 3. If the value of the credit, property, ~~or~~ services,
7 12 employment, or other benefits exceeds one thousand dollars,
7 13 the person commits a class "D" felony. If the value of the
7 14 credit, property, ~~or~~ services, employment, or other benefits
7 15 does not exceed one thousand dollars or if a value cannot be
7 16 determined, the person commits an aggravated misdemeanor.

7 17 Sec. 11. NEW SECTION. 715A.8A IDENTITY THEFT == AIDING
7 18 AND ABETTING.

7 19 A person who knowingly assists an unauthorized alien obtain
7 20 false identification in order to obtain employment commits the
7 21 offense of identity theft under section 715A.8 by aiding and
7 22 abetting the commission of the offense as provided in section
7 23 703.1.

7 24 Sec. 12. Section 715A.9, Code 2007, is amended to read as
7 25 follows:

7 26 715A.9 VALUE FOR PURPOSES OF IDENTITY THEFT.

7 27 The value of property, ~~or~~ services, employment, or other
7 28 benefits is ~~its~~ the highest value by any reasonable standard
7 29 at the time the identity theft is committed. Any reasonable
7 30 standard includes but is not limited to market value within
7 31 the community, actual value, or replacement value.

7 32 If credit, property, ~~or~~ services, employment, or other
7 33 benefits are obtained by two or more acts from the same person
7 34 or location, or from different persons by two or more acts
7 35 which occur in approximately the same location or time period
8 1 so that the identity thefts are attributable to a single
8 2 scheme, plan, or conspiracy, the acts may be considered as a
8 3 single identity theft and the value may be the total value of
8 4 all credit, property, ~~and~~ services, employment, or other
8 5 benefits involved.

8 6 DIVISION III
8 7 BAIL RESTRICTIONS

8 8 Sec. 13. Section 811.1, Code 2007, is amended by adding
8 9 the following new subsection:

8 10 NEW SUBSECTION. 4. A defendant who is an identified
8 11 unauthorized alien and is not lawfully present in the United
8 12 States.

8 13 Sec. 14. NEW SECTION. 811.1B UNAUTHORIZED ALIEN ==
8 14 NOTIFICATION.

8 15 The law enforcement agency responsible for the arrest of a
8 16 defendant who has been denied bail pursuant to section 811.1,
8 17 subsection 4, shall notify the United States immigration and
8 18 customs enforcement about the defendant who has been denied
8 19 bail.

8 20 Sec. 15. IMPLEMENTATION OF ACT. Section 25B.2, subsection
8 21 3, shall not apply to the sections of this Act amending
8 22 section 811.1 and enacting section 811.1B.

8 23 DIVISION IV
8 24 EMPLOYMENT PROHIBITIONS

8 25 Sec. 16. NEW SECTION. 91F.1 DEFINITIONS.

8 26 As used in this chapter:

8 27 1. "Commissioner" means the labor commissioner appointed
8 28 pursuant to section 91.2 or the labor commissioner's designee.

8 29 2. "Employee" means a natural person who is employed in
8 30 this state for wages paid on an hourly basis by an employer.

8 31 3. "Employer" means a person, as defined in section 4.1,
8 32 who in this state employs for wages, paid on an hourly basis,
8 33 one or more natural persons. An employer does not include a
8 34 client, patient, customer, or other person who obtains
8 35 professional services from a licensed person who provides the
9 1 services on a fee service basis or as an independent
9 2 contractor, or the state, or an agency or governmental
9 3 subdivision of the state.

9 4 4. "Unauthorized alien" means a person who is not lawfully
9 5 present in the United States.

9 6 Sec. 17. NEW SECTION. 91F.2 UNAUTHORIZED ALIENS ==
9 7 EMPLOYER PROHIBITION.

9 8 An employer shall not knowingly employ as an employee an
9 9 unauthorized alien. For purposes of this section, "knowingly
9 10 employ as an employee an unauthorized alien" means an employer

9 11 has actual knowledge that a person is an unauthorized alien
9 12 and employs the person as an employee. An employer who
9 13 obtains a verification receipt of employment eligibility from
9 14 the program authorized by the federal Illegal Immigration
9 15 Reform and Immigrant Responsibility Act of 1996, Pub. L. No.
9 16 104=208, shall not be considered in violation of this chapter.

9 17 Sec. 18. NEW SECTION. 91F.3 PENALTIES.
9 18 1. An employer who violates section 91F.2 is subject to a
9 19 civil penalty of up to ten thousand dollars.

9 20 2. A corporate officer of an employer who, by knowingly
9 21 directing the repeated violation of section 91F.2,
9 22 demonstrates a pattern of employing unauthorized aliens
9 23 commits a serious misdemeanor.

9 24 3. An employer who, through repeated violation of section
9 25 91F.2, demonstrates a pattern of employing unauthorized aliens
9 26 may be ordered to pay punitive damages.

9 27 Sec. 19. NEW SECTION. 91F.4 DUTIES AND AUTHORITY OF THE
9 28 COMMISSIONER == ENFORCEMENT BY COUNTY ATTORNEY.

9 29 1. The commissioner shall adopt rules to implement and
9 30 enforce this chapter.

9 31 2. In order to carry out the purposes of this chapter, the
9 32 commissioner or the commissioner's representative, upon
9 33 presenting appropriate credentials to an employer's owner,
9 34 operator, or agent in charge, may:

9 35 a. Inspect employment records relating to the employees of
10 1 the employer.

10 2 b. Interview an employer, owner, operator, agent, or
10 3 employee, during working hours or at other reasonable times.

10 4 3. If the commissioner has reason to believe that an
10 5 employer may be in violation of this chapter, the commissioner
10 6 shall notify the appropriate county attorney, and provide the
10 7 county attorney with any supporting information, for
10 8 prosecution of the violation.

10 9 Sec. 20. NEW SECTION. 91F.5 PROHIBITIONS RELATING TO
10 10 CERTAIN ACTIONS BY EMPLOYEES == PENALTY == CIVIL REMEDY.

10 11 1. An employer shall not discharge an employee or take or
10 12 fail to take action regarding an employee's appointment or
10 13 proposed appointment or promotion or proposed promotion, or
10 14 regarding any advantage of an employee as a reprisal for a
10 15 failure by that employee to inform the employer that the
10 16 employee made a disclosure of information to any law
10 17 enforcement agency if the employee reasonably believes the
10 18 information evidences a violation of section 91F.2.

10 19 2. Subsection 1 does not apply if the disclosure of the
10 20 information is prohibited by statute.

10 21 3. An employer who violates subsection 1 commits a serious
10 22 misdemeanor.

10 23 4. Subsection 1 may be enforced through a civil action.

10 24 a. An employer who violates subsection 1 is liable to an
10 25 aggrieved employee for affirmative relief, including
10 26 reinstatement, with or without back pay, or any other
10 27 equitable relief the court deems appropriate, including
10 28 attorney fees and costs.

10 29 b. If an employer commits, is committing, or proposes to
10 30 commit an act in violation of subsection 1, an injunction may
10 31 be granted through an action in district court to prohibit the
10 32 person from continuing such acts. The action for injunctive
10 33 relief may be brought by an aggrieved employee or the county
10 34 attorney.

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DIVISION V
EMPLOYEE CLASSIFICATION

11 2 Sec. 21. NEW SECTION. 91G.1 PURPOSE.

11 3 The purpose of this chapter is to address the practice of
11 4 misclassifying employees as independent contractors.

11 5 Sec. 22. NEW SECTION. 91G.2 DEFINITIONS.

11 6 1. "Commissioner" means the labor commissioner appointed
11 7 pursuant to section 91.2 or the labor commissioner's designee.

11 8 2. "Construction" means any constructing, altering,
11 9 reconstructing, repairing, rehabilitating, refinishing,
11 10 refurbishing, remodeling, remediating, renovating, custom
11 11 fabricating, maintenance, landscaping, improving, wrecking,
11 12 painting, decorating, demolishing, and adding to or
11 13 subtracting from any building, structure, airport facility,
11 14 highway, roadway, street, alley, bridge, sewer, drain, ditch,
11 15 sewage disposal plant, water works, parking facility,
11 16 railroad, excavation or other project, development, real
11 17 property, or improvement, or to do any part thereof, whether
11 18 or not the performance of the work described in this
11 19 subsection involves an addition to, or fabrication into, any
11 20 structure, project, development, real property, or improvement
11 21 described in this subsection of any material or article of

11 22 merchandise.

11 23 3. "Contractor" means any person, as defined in section
11 24 4.1, engaged in construction. "Contractor" includes general
11 25 contractors, subcontractors, and the state of Iowa and its
11 26 officers, agencies, and political subdivisions.

11 27 4. "Division" means the division of labor services of the
11 28 department of workforce development.

11 29 5. "Interested party" means an individual performing
11 30 services for a contractor who alleges a violation of this
11 31 chapter or a person with an interest in compliance with this
11 32 chapter.

11 33 6. "Performing services" means any constructing, altering,
11 34 reconstructing, repairing, rehabilitating, refinishing,
11 35 refurbishing, remodeling, remediating, renovating, custom
12 1 fabricating, maintenance, landscaping, improving, wrecking,
12 2 painting, decorating, demolishing, and adding to or
12 3 subtracting from any building, structure, airport facility,
12 4 highway, roadway, street, alley, bridge, sewer, drain, ditch,
12 5 sewage disposal plant, water works, parking facility,
12 6 railroad, excavation or other project, development, real
12 7 property, or improvement, or to do any part thereof, whether
12 8 or not the performance of the work described in this
12 9 subsection involves an addition to, or fabrication into, any
12 10 structure, project, development, real property, or improvement
12 11 described in this subsection of any material or article of
12 12 merchandise.

12 13 Sec. 23. NEW SECTION. 91G.3 STATUS OF INDIVIDUALS
12 14 PERFORMING SERVICES.

12 15 1. An individual performing services shall be classified
12 16 as an employee unless all of the following conditions are
12 17 present and are intended to create an independent contractor
12 18 relationship between the individual and the contractor:

12 19 a. The contractor does not control or direct the
12 20 performance of services by the individual.

12 21 b. The contractor is not responsible for the payment of
12 22 the individual's wages.

12 23 c. The contractor does not have the right to discharge or
12 24 terminate the employment relationship with the individual.

12 25 d. The contractor is not the authority in charge of the
12 26 work or for whose benefit the individual is providing
12 27 services.

12 28 2. An individual classified as an employee under this
12 29 section shall also be classified as an employee pursuant to
12 30 chapters 85, 85A, 85B, 88, 91A, and 96. A contractor commits
12 31 a violation of this chapter by not treating the individual so
12 32 classified under this chapter as an employee pursuant to
12 33 chapters 85, 85A, 85B, 88, 91A, and 96.

12 34 3. An individual who is an owner-operator as described in
12 35 section 85.61, subsection 11, and not deemed an employee under
13 1 that subsection shall not be classified as an employee under
13 2 this section.

13 3 Sec. 24. NEW SECTION. 91G.4 NOTICE OF LAW.

13 4 1. The commissioner shall create posters in both English
13 5 and Spanish summarizing the requirements of this chapter. The
13 6 English and Spanish versions of the poster shall be posted on
13 7 the division's internet site and on bulletin boards in the
13 8 workforce centers.

13 9 2. The commissioner shall provide the posters without
13 10 charge to contractors upon request.

13 11 3. If a contractor violates section 91G.3 or 91G.8 or
13 12 rules adopted pursuant to any of those sections, the
13 13 contractor shall post the English and Spanish versions of the
13 14 poster created by the commissioner. The posters shall be
13 15 posted in conspicuous locations at the places where notices to
13 16 employees are normally posted at each job site and office of
13 17 the contractor.

13 18 Sec. 25. NEW SECTION. 91G.5 ENFORCEMENT.

13 19 1. An interested party may file a written complaint with
13 20 the commissioner alleging a violation of section 91G.3, 91G.4,
13 21 or 91G.8 or rules adopted pursuant to any of those sections.
13 22 An interested party who makes a complaint when the interested
13 23 party knows such representation to be false commits a simple
13 24 misdemeanor.

13 25 2. The commissioner shall adopt rules pursuant to and
13 26 consistent with chapter 17A regarding investigations to
13 27 determine whether a contractor has violated any provisions of
13 28 this chapter or any rules adopted pursuant to this chapter.

13 29 3. The commissioner shall enforce the provisions of this
13 30 chapter. The commissioner may conduct investigations in
13 31 connection with the administration and enforcement of this
13 32 chapter and may visit and inspect, at all reasonable times,

13 33 any places where individuals are performing services for a
13 34 contractor and may inspect, at all reasonable times, documents
13 35 related to the determination of whether an individual is an
14 1 employee under section 91G.3.

14 2 4. The commissioner and an employee of the commissioner
14 3 shall be indemnified for any damages and legal expenses
14 4 incurred as a result of the good-faith performance of the
14 5 employee's official duties under this chapter, in regard to
14 6 any claim for civil damages not specifically covered by the
14 7 Iowa tort claims Act, chapter 669.

14 8 5. The commissioner may compel by subpoena the attendance
14 9 and testimony of witnesses and the production of books,
14 10 payrolls, records, papers, and other evidence in an
14 11 investigation and may administer oaths to witnesses.

14 12 6. Upon the failure or refusal of any person to obey a
14 13 subpoena, the commissioner may petition a district court of
14 14 competent jurisdiction, and upon proper showing, the court may
14 15 enter an order compelling the witness to appear and testify or
14 16 produce documentary evidence. Failure to obey the court order
14 17 is punishable as contempt of court.

14 18 7. A determination by the commissioner as to whether a
14 19 violation of section 91G.3, 91G.4, or 91G.8 or rules adopted
14 20 pursuant to any of those sections has occurred shall be
14 21 considered final agency action under chapter 17A.

14 22 8. If the commissioner determines upon investigation that
14 23 a violation of section 91G.3, 91G.4, or 91G.8 or rules adopted
14 24 pursuant to any of those sections has occurred, the
14 25 commissioner may do any of the following:

14 26 a. Issue and cause to be served on any party an order to
14 27 cease and desist from any further violation.

14 28 b. Take affirmative or other action as deemed reasonable
14 29 to eliminate the effect of any violation.

14 30 c. Collect the amount of any wages, salary, employment
14 31 benefits, or other compensation denied or lost to an
14 32 individual.

14 33 d. Assess any civil penalty allowed by this chapter.

14 34 e. Refer matters to the county attorney upon determining
14 35 that a criminal violation may have occurred.

15 1 9. Judicial review of any final agency action of the
15 2 commissioner taken pursuant to this section may be sought in
15 3 accordance with the terms of chapter 17A. If a petition for
15 4 judicial review is not filed within thirty days after service
15 5 of the determination of the commissioner, the commissioner's
15 6 determination shall be conclusive in connection with any
15 7 petition for enforcement filed by the commissioner and in such
15 8 case, the clerk of court, unless otherwise ordered by the
15 9 court, shall forthwith enter a decree enforcing the
15 10 commissioner's determination and shall transmit a copy of the
15 11 decree to the commissioner and the contractor named in the
15 12 petition.

15 13 10. A contractor shall not be liable under this chapter
15 14 for any other contractor's failure to properly classify
15 15 individuals.

15 16 11. In any civil action to enforce the provisions of this
15 17 chapter, the commissioner may be represented by an attorney
15 18 employed by the division or, at the commissioner's request, by
15 19 the attorney general.

15 20 Sec. 26. NEW SECTION. 91G.6 PENALTIES.

15 21 1. A contractor who violates section 91G.3, 91G.4, or
15 22 91G.8 or rules adopted pursuant to one of those sections is
15 23 subject to a civil penalty not to exceed one thousand two
15 24 hundred fifty dollars for a first violation as determined by
15 25 the commissioner. A contractor is subject to a civil penalty
15 26 not to exceed one thousand eight hundred seventy-five dollars
15 27 for a second violation occurring within six years of a first
15 28 violation as determined by the commissioner. A contractor
15 29 shall be subject to a civil penalty not to exceed three
15 30 thousand one hundred twenty-five dollars for a third or
15 31 successive violation occurring within six years of a first
15 32 violation as determined by the commissioner.

15 33 2. A contractor who violates any provision of section
15 34 91G.3, 91G.4, or 91G.8 or rules adopted pursuant to one of
15 35 those sections commits a simple misdemeanor. A contractor who
16 1 commits such a second violation within six years of a first
16 2 violation commits a serious misdemeanor. A contractor who
16 3 commits such a third or subsequent violation within six years
16 4 of a first violation commits an aggravated misdemeanor.

16 5 3. A contractor who obstructs the commissioner, the
16 6 employee of the commission, or another person authorized to
16 7 inspect places where individuals are performing services for a
16 8 contractor is subject to a civil penalty not to exceed one

16 9 thousand eight hundred seventy-five dollars.

16 10 4. Each violation described in this section for each
16 11 individual and for each day the violation continues
16 12 constitutes a separate and distinct violation. In determining
16 13 the amount of a civil penalty, the commissioner shall consider
16 14 the appropriateness of the civil penalty to the contractor and
16 15 the gravity of the violation.

16 16 Sec. 27. NEW SECTION. 91G.7 STATE CONTRACT PROHIBITION.

16 17 For a second or subsequent violation of section 91G.3 or
16 18 91G.4 determined by the commissioner to have occurred within
16 19 six years of an earlier violation or for a first or subsequent
16 20 violation of section 91G.8, the commissioner shall add the
16 21 contractor's name to a list to be posted on the division's
16 22 internet site and notify the violating contractor of the
16 23 posting. A state contract shall not be awarded to a
16 24 contractor whose name appears on the list until three years
16 25 have elapsed from the date of the determination of the last
16 26 violation.

16 27 Sec. 28. NEW SECTION. 91G.8 RETALIATION.

16 28 1. A contractor or contractor's agent shall not retaliate
16 29 through discharge or in any other manner against an individual
16 30 for any of the following:

16 31 a. Making a good-faith complaint to the commissioner or to
16 32 a state or federal agency regarding a violation of section
16 33 91G.3 or 91G.4.

16 34 b. Testifying or otherwise cooperating in an investigation
16 35 or proceeding under this chapter.

17 1 2. Such retaliation shall subject a contractor or
17 2 contractor's agent to civil penalties and a prohibition on
17 3 being awarded state contracts pursuant to this chapter and may
17 4 give rise to a private right of action.

17 5 Sec. 29. NEW SECTION. 91G.9 DISPOSITION OF PENALTIES.

17 6 Any penalties assessed and collected by the commissioner
17 7 pursuant to this chapter shall be deposited in the general
17 8 fund of the state.

17 9 Sec. 30. NEW SECTION. 91G.10 PRIVATE RIGHT OF ACTION.

17 10 1. An individual, who has not received compensatory
17 11 damages under section 91G.5, alleging a contractor's violation
17 12 of this chapter or a rule adopted pursuant to this chapter and
17 13 damages may file suit in district court against the
17 14 contractor, in the county where the alleged violation
17 15 occurred, or where any person who is party to the action
17 16 resides, without regard to exhaustion of any alternative
17 17 administrative remedies provided in this chapter. Actions may
17 18 be brought by one or more aggrieved individuals for and on
17 19 behalf of themselves and other individuals similarly situated.

17 20 2. If it is established that an individual has been

17 21 damaged through a proceeding under subsection 1 by a
17 22 contractor who has willfully violated a provision of this
17 23 chapter or a rule adopted pursuant to this chapter, the
17 24 individual shall be entitled to collect the following:

17 25 a. The amount of any wages, salary, employment benefits,
17 26 or other compensation denied or lost to the individual due to
17 27 the violation or a retaliatory action, and court costs and
17 28 interest at the statutory rate from the date of filing.

17 29 b. Punitive damages, not to exceed five times the amount
17 30 awarded in paragraph "a".

17 31 c. Reasonable attorney fees, if the contractor who has
17 32 damaged the individual has committed a second or subsequent
17 33 violation of section 91G.3, 91G.4, or 91G.8, or rules adopted
17 34 pursuant to this chapter, occurring within six years of a
17 35 first violation.

18 1 3. The right of a damaged individual to bring an action
18 2 under this section terminates five years from the date of the
18 3 alleged violation by the contractor.

18 4 Sec. 31. NEW SECTION. 91G.11 COOPERATION.

18 5 1. All state agencies shall cooperate under this chapter
18 6 by sharing information concerning possible misclassification
18 7 by a contractor of one or more of the contractor's employees
18 8 as independent contractors.

18 9 2. Upon determining that a contractor misclassified one or
18 10 more employees as independent contractors in violation of this
18 11 chapter, the commissioner shall notify the division
18 12 administering unemployment insurance services, the division of
18 13 workers' compensation, and the department of revenue, each of
18 14 which shall investigate the contractor's compliance with
18 15 applicable laws.

18 16 3. Cooperation under this chapter shall be considered a
18 17 duty of office for the heads of state agencies or their
18 18 designees. Failure to so cooperate constitutes a violation of
18 19 section 721.2, subsection 6.

18 20 Sec. 32. NEW SECTION. 91G.12 REPORTING REQUIREMENT.

18 21 The commissioner shall submit an annual report about the
18 22 administration of this chapter to the general assembly by
18 23 January 15. The first annual report shall be due January 15,
18 24 2010.

18 25 Sec. 33. NEW SECTION. 91G.13 AGRICULTURAL ACTIVITIES.

18 26 A person shall not be classified as an employee or a
18 27 contractor under this chapter when the person participates in
18 28 agricultural activities on agricultural land. Agricultural
18 29 activities include the raising, harvesting, handling, drying,
18 30 processing, or storage of crops used for feed, food, fuel,
18 31 seed, or fiber; the production, care, feeding, or keeping of
18 32 livestock; fencing; drainage; the handling or transportation
18 33 of crops or livestock; the storage, treatment, land
18 34 application, or disposal of livestock manure; the application
18 35 of fertilizers, soil conditioners, pesticides, and herbicides
19 1 on crops; environmental protection or preservation activities;
19 2 and any accessory or related activities.

19 3 Sec. 34. Section 84A.5, subsection 4, Code Supplement
19 4 2007, is amended to read as follows:

19 5 4. The division of labor services is responsible for the
19 6 administration of the laws of this state under chapters 88,
19 7 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91G, 92,
19 8 and 94A, and section 85.68. The executive head of the
19 9 division is the labor commissioner, appointed pursuant to
19 10 section 91.2.

19 11 Sec. 35. Section 85.61, subsection 11, paragraph b, Code
19 12 Supplement 2007, is amended to read as follows:

19 13 b. (1) "Worker" or "employee" includes an inmate as
19 14 defined in section 85.59 and a person described in section
19 15 85.60.

19 16 (2) "Worker" or "employee" includes an individual who is
19 17 classified as an employee pursuant to section 91G.3.

19 18 Sec. 36. Section 86.45, subsection 2, Code 2007, is
19 19 amended by adding the following new paragraph:

19 20 NEW PARAGRAPH. j. To cooperate with the division of labor
19 21 services, the division of the department of workforce
19 22 development that administers unemployment insurance services,
19 23 and the department of revenue pursuant to chapter 91G by
19 24 sharing information concerning possible misclassification of
19 25 one or more employees as independent contractors.

19 26 Sec. 37. Section 88.3, subsection 4, Code 2007, is amended
19 27 to read as follows:

19 28 4. "Employee" means an employee of an employer who is
19 29 employed in a business of the employer. "Employee" also means
19 30 an inmate as defined in section 85.59, when the inmate works
19 31 in connection with the maintenance of the institution, in an
19 32 industry maintained in the institution, or while otherwise on
19 33 detail to perform services for pay. "Employee" also means a
19 34 volunteer involved in responses to hazardous waste incidences.
19 35 The employer of a volunteer is that entity which provides or
20 1 which is required to provide workers' compensation coverage
20 2 for the volunteer. "Employee" includes an individual who is
20 3 classified as an employee pursuant to section 91G.3.

20 4 Sec. 38. Section 91.4, subsection 5, Code Supplement 2007,
20 5 is amended to read as follows:

20 6 5. The director of the department of workforce
20 7 development, in consultation with the labor commissioner,
20 8 shall, at the time provided by law, make an annual report to
20 9 the governor setting forth in appropriate form the business
20 10 and expense of the division of labor services for the
20 11 preceding year, the number of disputes or violations processed
20 12 by the division and the disposition of the disputes or
20 13 violations, and other matters pertaining to the division which
20 14 are of public interest, together with recommendations for
20 15 change or amendment of the laws in this chapter and chapters
20 16 88, 88A, 88B, 89, 89A, 89B, 90A, 91A, 91C, 91D, 91E, 91G, 92,
20 17 and 94A, and section 85.68, and the recommendations, if any,
20 18 shall be transmitted by the governor to the first general
20 19 assembly in session after the report is filed.

20 20 Sec. 39. Section 91A.2, subsection 3, unnumbered paragraph
20 21 1, Code 2007, is amended to read as follows:

20 22 "Employee" means a natural person who is employed in this
20 23 state for wages by an employer. Employee also includes a
20 24 commission salesperson who takes orders or performs services
20 25 on behalf of a principal and who is paid on the basis of
20 26 commissions but does not include persons who purchase for
20 27 their own account for resale. "Employee" includes an
20 28 individual who is classified as an employee pursuant to
20 29 section 91G.3. For the purposes of this chapter, the
20 30 following persons engaged in agriculture are not employees:

20 31 Sec. 40. Section 96.11, Code Supplement 2007, is amended
20 32 by adding the following new subsection:
20 33 NEW SUBSECTION. 17. INTERAGENCY COOPERATION.
20 34 a. All state agencies shall cooperate with the director
20 35 and the department pursuant to chapter 91G by sharing
21 1 information concerning possible misclassification of employees
21 2 as independent contractors.
21 3 b. Cooperation under this chapter shall be considered a
21 4 duty of office for the heads of the state agencies or their
21 5 designees. Failure to so cooperate constitutes a violation of
21 6 section 721.2, subsection 6.
21 7 Sec. 41. Section 96.19, subsection 18, paragraph a,
21 8 subparagraph (2), Code 2007, is amended to read as follows:
21 9 (2) Any individual who, under the usual common law rules
21 10 applicable in determining the employer=employee relationship,
21 11 has the status of an employee, or any individual who is
21 12 classified as an employee pursuant to section 91G.3, or

21 13 Sec. 42. LIVING WAGE IMPACT STUDY.
21 14 1. If funding is approved or appropriated to the state
21 15 board of regents for such purposes, Iowa state university
21 16 shall conduct a study regarding the economic, fiscal, and
21 17 social impacts of establishing the living wage, also known as
21 18 the self-sufficiency wage, in Iowa. The living wage in the
21 19 study shall be based on a forty-hour work week, and the study
21 20 shall provide all of the following:
21 21 a. A two-tiered living wage, one tier with benefits and
21 22 one without benefits, for family sizes ranging from two people
21 23 to six people for all ninety-nine counties.
21 24 b. The impact that a living wage would have on full-time
21 25 workers, the multiplier effect of a living wage on the
21 26 economy, and whether more jobs would be created by this
21 27 multiplier effect.
21 28 c. How a living wage would impact public assistance
21 29 programs, particularly whether it would reduce costs.
21 30 d. How a living wage would impact state and local economic
21 31 development programs.
21 32 e. How a living wage would assist or hinder the housing
21 33 market.
21 34 f. Taking into account paragraphs "b", "c", "d", and "e",
21 35 examine whether there would be an overall positive impact on
22 1 the economy considering possible business concerns of
22 2 inflation and job loss.
22 3 g. Evaluate other states or metropolitan areas that have a
22 4 living wage to provide examples of how a living wage could be
22 5 implemented on a phased-in basis for all workers in this
22 6 state, including the private and public sectors.
22 7 h. Any other recommendations that the individuals assigned
22 8 to the study believe are relevant to establishing a living
22 9 wage in this state.
22 10 2. An Iowa state university sociology professor, an Iowa
22 11 state university human development and family studies
22 12 professor, and an Iowa state university economics professor,
22 13 all who specialize in this area, shall conduct and coordinate
22 14 the study.
22 15 3. The department of workforce development, the department
22 16 of economic development, the department of human services, the
22 17 university of Iowa, the university of northern Iowa, the child
22 18 and family policy center, the Iowa policy project, and
22 19 representatives of labor organizations and associations
22 20 representing business and industry shall cooperate in
22 21 conducting the study.
22 22 4. Iowa state university shall submit a report about the
22 23 findings of the study to the general assembly by December 14,
22 24 2008.

DIVISION VI

UNAUTHORIZED ALIENS

22 27 Sec. 43. NEW SECTION. 421.71 STATE AIDE == EMPLOYER
22 28 ELIGIBILITY.

22 29 1. An employer who chooses not to use the federal
22 30 employment eligibility program as authorized by the federal
22 31 Illegal Immigration Reform and Immigrant Act of 1996, Pub. L.
22 32 No. 104=208, shall not be eligible for any developmental
22 33 assistance.
22 34 2. For the purposes of this section, "developmental
22 35 assistance" means any form of public assistance, including tax
23 1 expenditures, made for the purpose of stimulating the economic
23 2 development of a corporation, industry, geographic
23 3 jurisdiction, or any other sector of the state's economy,
23 4 including but not limited to public assistance involving
23 5 industrial development bonds, training grants, loans, loan
23 6 guarantees, enterprise zones, empowerment zones, tax increment

23 7 financing, fee waivers, land price subsidies, infrastructure
23 8 constructed or improved for the benefit of a single business
23 9 or defined group of businesses at the time it is built or
23 10 improved, matching funds, tax abatements, tax credits and tax
23 11 discounts of every kind, including corporate, franchise,
23 12 personal income, sales and use, raw materials, real property,
23 13 job creation, individual investment, excise, utility,
23 14 inventory, accelerated depreciation, and research and
23 15 development tax credits and discounts.

23 16 Sec. 44. NEW SECTION. 644.1 UNFAIR TRADE PRACTICE.

23 17 The discharge of a United States citizen or lawful
23 18 permanent resident alien employee by an employer of this
23 19 state, who, on the date of the discharge employs an
23 20 unauthorized alien, shall be an unfair trade practice. For
23 21 the purpose of this section, "unfair trade practice" means any
23 22 practice which offends established public policy. The
23 23 discharged employee shall have a private cause of action for
23 24 such unfair trade practice for damages due to discharge.

23 25 Sec. 45. NEW SECTION. 710B.1 ASSISTING UNAUTHORIZED
23 26 ALIENS.

23 27 1. An employer, employee, or labor organization, or
23 28 official member shall not knowingly assist an unauthorized
23 29 alien in avoiding contact with state or federal officials.

23 30 2. For purposes of this section, an "unauthorized alien"
23 31 means a person who is not a citizen or legal resident and who
23 32 has not been lawfully admitted to the United States pursuant
23 33 to federal law.

23 34 3. A person who violates this section commits a class "D"
23 35 felony.

24 1 Sec. 46. MEMORANDUM OF UNDERSTANDING == ENFORCEMENT OF
24 2 FEDERAL IMMIGRATION LAW.

24 3 1. The attorney general is authorized and directed to
24 4 negotiate the terms of a memorandum of understanding between
24 5 the state of Iowa and the United States department of justice
24 6 or the United States department of homeland security
24 7 concerning the enforcement of federal immigration and custom
24 8 laws, detention removals, and investigations in the state of
24 9 Iowa. The agreement shall provide that costs incurred by the
24 10 state for the detention and deportation of an unauthorized
24 11 alien shall be reimbursed by the federal government.

24 12 2. The memorandum of understanding negotiated pursuant to
24 13 subsection 1 shall be signed on behalf of this state by the
24 14 attorney general and the governor or as otherwise required by
24 15 the appropriate federal agency but shall not be implemented
24 16 until money is appropriated for such purpose.

24 17 3. A local government, whether acting through its
24 18 governing body or by an initiative, referendum, or any other
24 19 process, shall not enact any ordinance, resolution, or policy
24 20 that limits or prohibits a law enforcement officer, local
24 21 officer, or local government employee from communicating or
24 22 cooperating with federal officials with regard to the
24 23 immigration status of any person within this state.

24 24 4. Notwithstanding any other provision of law, a
24 25 government entity or official within the state of Iowa shall
24 26 not prohibit, or in any way restrict, any government entity or
24 27 official from sending to, or receiving from, the United States
24 28 department of homeland security information regarding the
24 29 citizenship or immigration status, lawful or unlawful, of any
24 30 individual.

24 31 5. Notwithstanding any other provision of law, a person or
24 32 agency shall not prohibit, or in any way restrict, a public
24 33 employee from doing any of the following with respect to
24 34 information regarding the immigration status, lawful or
24 35 unlawful, of any individual:

25 1 a. Sending such information to, or requesting or receiving
25 2 such information from, the United States department of
25 3 homeland security.

25 4 b. Maintaining such information.

25 5 c. Exchanging such information with any other federal,
25 6 state, or local government entity.

25 7 6. Any natural or legal person lawfully domiciled in this
25 8 state may file for a writ of mandamus to compel any
25 9 noncooperating local or state governmental agency to comply
25 10 with this section.

25 11 Sec. 47. DEPARTMENT OF PUBLIC SAFETY == ILLEGAL
25 12 IMMIGRATION TASK FORCE. The department of public safety shall
25 13 create an illegal immigration task force, consisting of twelve
25 14 state troopers, to enforce immigration laws.

25 15 DIVISION VII

25 16 SEVERABILITY AND EFFECTIVE DATE

25 17 Sec. 48. SEVERABILITY. The provisions of this Act are

25 18 severable in the manner provided by section 4.12.
25 19 HF 2686
25 20 ak/jg/25